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JOHN A. O'MALLEY (Admitted Pro Hac Vice)
SPENCER PERSSON (Admitted Pro Hac Vice)
MICHELLE L. MELLO (Admitted Pro Hac Vice)
NORTON ROSE FULBRIGHT US LLP
555 South Flower Street
Forty-First Floor
Los Angeles, California 90071
Telephone: (213) 892-9200
Facsimile: (213) 892-9494
john.omalley@nortonrosefulbright.com
spencer.persson@nortonrosefulbright.com
michelle.mello@nortonrosefulbright.com

JAMES J. PISANELLI (Nevada Bar 4027)
TODD L. BICE (Nevada Bar 4534)
DEBRA L. SPINELLI (Nevada Bar 9695)
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Telephone: (702) 214-2100
Facsimile: (702) 214-2101
jjp@pisanellibice.com
tlb@pisanellibice.com
dls@pisanellibice.com

Attorneys for Plaintiffs
RICHARD SUEN AND ROUND SQUARE COMPANY LIMITED

DISTRICT COURT

CLARK COUNTY, NEVADA

RICHARD SUEN and ROUND SQUARE COMPANY LIMITED,

Plaintiffs,

v.

LAS VEGAS SANDS, INC.,

Defendant.

Case No. A493744
Department No. XXXII

OPPOSITION TO DEFENDANT LAS VEGAS SANDS CORP.'S MOTION FOR A PROTECTIVE ORDER TO PREVENT PLAINTIFF FROM RE-DEPOSING SHELDON G. ADELSON

Hearing Date: February 25, 2019

Hearing Time: 9:00 a.m.

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Case Number: 04A493744

I. INTRODUCTION

Defendant Las Vegas Sands Corp.'s ("LVSC") latest attempt to shield its Chairman and Chief Executive Officer, Sheldon G. Adelson ("Adelson"), from deposition is predicated upon its apparent belief that this Court will ignore the law and simply accommodate Adelson's latest effort to avoid providing testimony. LVSC first attempts to avoid producing Adelson, noting that he has previously been deposed and testified at the two prior trials of this action. According to LVSC, this somehow means that Adelson should not have to provide further testimony. That is a rather incredible assertion for LVSC, since it has taken the opposite position with respect to Round Square and Richard Suen. LVSC surely recalls its own representations – just a month ago – about how it was "entitled" to retake the deposition of Round Square/Suen, despite the fact that Suen (like Adelson) was previously deposed and testified at both prior trials. Indeed, as noted in Round Square's Motion to Compel Adelson to Appear for Deposition, it reminded this Court that LVSC had touted its agreement to produce Adelson as justification for why it was entitled to another Round Square/Suen deposition. Tellingly, LVSC's motion for protective order ignores its prior agreements and positions.

Next, LVSC claims that Adelson should be excused from further deposition based upon his age/health. But that aspect of LVSC's motion is most notable for what it lacks. Notably, there is no affidavit – not one – from anyone familiar with Adelson's role as Chairman and CEO of LVSC and how he is performing those duties today. No affidavit from any existing LVSC officers or directors claiming that Adelson is not currently fulfilling his work duties or that he is not capable of providing those services. No evidence whatsoever of Adelson's daily activities, his recent travels, daily schedule, or who he is meeting with in performing his job duties. Again, as noted in Round Square's motion to compel Adelson's attendance, LVSC's recent public statements plainly belie any suggestion that he is not up to the Chairman/CEO job and its duties. The lack of any actual evidence on these critical facts is fatal to LVSC's latest self-serving actions to have one set of rules for Adelson and one set for everyone else.

LVSC apparently hopes to distract from the lack of actual evidence disputing Adelson's ongoing role as company CEO by submitting a purported unsworn letter from a doctor, one failing

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to specify Adelson's day-to-day activities or even when the doctor last saw him. Such a letter is not evidence of any nature, let alone meeting the extraordinary burden of a witness – in this case a central witness – to avoid providing testimony. Any issues surrounding a witness' stamina to answer questions can appropriately be addressed by this Court in requiring the deposition to occur in reasonable installments and at a convenient location. Indeed, LVSC's suggestion that Adelson may not be available to testify at the time of trial is all the more reason why a video deposition to preserve his testimony is critical.

II. ANALYSIS

A. Adelson is Subject to Deposition to the Same Extent as Any Other Witness, Just Like Suen.

LVSC and Adelson's latest effort to avoid providing testimony does not exist in a vacuum. Indeed, the Court need not look beyond the events of this litigation – ignoring other cases where LVSC and Adelson have endeavored to avoid providing his testimony. This Court should recall the lengths to which Adelson and LVSC went just three years ago to evade service of a subpoena and then going to the extraordinary lengths of claiming that his testimony should not be video recorded because it would somehow pose a danger to his safety as a public figure. In fact, LVSC went so far as to submit a declaration from a former high-ranking member of the United States' Secret Service agent, Brian Nagel, swearing to the purported terrorist risks associated with Adelson testifying. But as before, once Round Square was permitted to challenge this self-serving testimony, including through Round Square's right to cross-examine the witnesses, this Court rejected LVSC's claims for suspension of the Court's rules and further ordered that Adelson would be deemed served and required to appear at trial.

The latest assertions by LVSC/Adelson are even less meritorious, being based on no actual evidence whatsoever. That probably explains why LVSC first attempts to argue that Round Square has no right to depose Adelson since he was previously deposed and appeared at the prior two trials. (LVSC Mot. at p. 4.) But that is a rather incredible assertion, considering that LVSC takes the exact opposite position in insisting that it is "entitled" to re-depose Suen/Round Square, even though Suen too was previously deposed and testified at the prior two trials. As this Court knows,

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LVSC successfully argued to this Court that it is entitled to an additional deposition of Suen, even though he has not been designated to provide any new or additional testimony by Round Square.

Contrary to its wants, there is not one set of rules for LVSC (*i.e.*, no deposition) and a different set of rules for Round Square (*i.e.* an additional deposition). And, LVSC's assertion that it is now withdrawing any new testimony topics from Adelson is not only irrelevant, but also disingenuous. Again, Round Square did not designate Suen as providing any added testimony on new topics and yet LVSC insists that it is entitled to another deposition. Moreover, the recent depositions that have occurred in this case, particularly the new experts offered by LVSC, make Adelson's testimony particularly important. As this Court knows, many of LVSC's new experts have relied upon efforts by LVSC to enter new gaming markets since the last trial, including Korea, Singapore and Japan. Round Square had no opportunity to examine Adelson – LVSC's Chairman and CEO – concerning his efforts to enter those markets, the approach he took, and the high-ranking government officials he courted in those jurisdictions, just as he did in Macau with the help of Round Square and its agents. Those matters are highly relevant and Round Square is entitled to obtain and preserve Adelson's testimony on subjects like that. Indeed, if there is a risk that Adelson will not be available to testify live at trial, it is all the more critical that his deposition be taken so that Round Square will have it available to present to the jury.

Simply put, LVSC's request for a rule concerning depositions – one completely at odds with what it advocated for its entitlement to re-depose Round Square/Suen – must be rejected.

B. LVSC Presents No Competent Evidence for an Extraordinary Protective Order.

As extensively outlined in Round Square's parallel motion to compel Adelson's deposition, the law mandates an extraordinary evidentiary showing in order to justify a protective order that precludes the taking of a deposition. Protective orders concerning the time, location and duration of a deposition – to accommodate any particularized needs of the witness – are one thing. But a protective order that would preclude the deposition altogether and thereby deprive the requesting party of the witness' testimony on particular topics is altogether different. Such a protective order

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is rarely granted and then only upon a particularized showing – backed up by actual evidence – that the deposition itself poses an actual genuine harm to the witness. (Round Square Mot. at p. 5.)

Here again, LVSC makes no showing whatsoever that would permit depriving Round Square of preserving Adelson's testimony for trial. After all, Adelson is currently the Chairman and CEO of LVSC. The company has presented no evidence that Adelson is not fulfilling those roles today. It has presented no evidence that he is incapable of answering questions at a deposition, any different than he is capable of answering questions and giving directives to the various executives with whom he works. Notably, there is no evidence presented by LVSC that Adelson does not continue to regularly interact with executives in his role as CEO. Just like LVSC has declined to provide any evidence disputing Adelson's capacity to travel and engage with people. Indeed, it is the absence of any such evidence – despite LVSC and Adelson knowing its high relevance here – that is most dispositive. *See* NRS 47.250 (stating presumption "[t]hat evidence willfully suppressed would be adverse if produced."); *see also Bass-Davis v. Davis*, 122 Nev. 422, 445, 134 P.3d 103, 105 (2006).

Nor does the conclusory unsworn letter from Adelson's purported doctor mask the lack of actual evidence. Most notable is what that letter does not say: It does not say that Adelson is incapable of serving in his capacity as Chairman and CEO of a publicly-traded company. It does not say that there are any restrictions upon him traveling. It does not say that there are any restrictions on him holding meetings. It does not say that there are any restrictions upon him making business decisions, decisions that, at his level, can impact the lives of thousands of employees and shareholders. It does not say that he is incapable of making important decisions. Tellingly, the only actual activity it references as discouraging is a "deposition," the one thing that Adelson is trying to avoid. In other words, for those things that Adelson wants to do and that will benefit him financially – such as running the business – anything goes. But for the one thing that he routinely seeks to avoid – having to provide testimony – it is somehow an undue burden. But since the law entitles the public to every person's testimony, the law provides no immunity from testifying short of genuine mental incapacity, something no one claims for Adelson. *Greenspun v. Eighth Jud. Dist. Ct.*, 91 Nev. 211, 215, 533 P.2d 482, 485 (1975).

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LVSC and Adelson's efforts to avoid providing sworn testimony in litigation has become a matter of routine. But at least in the last instance, LVSC pretended to create the appearance of legitimacy to those efforts by submitting sworn testimony, even if it later collapsed under challenge. Here, LVSC presents not a single affidavit from anyone to substantiate any inability to provide testimony. A cryptic conclusory letter does not even come close to what the law commands.[1]

III. CONCLUSION

LVSC's request for a deposition rule different than the one it enlisted to re-depose Suen must be rejected. Adelson's well-known opposition to providing sworn testimony is not a legitimate basis for avoiding a deposition. Indeed, any suggestion that he may not be available to testify at trial is all the more reason why this Court must order him to appear for a deposition, as a deposition can be conducted in reasonable intervals and at a convenient location thereby minimizing any inconvenience.

DATED this 22nd day of February, 2019.

PISANELLI BICE PLLC

By: _____ NV Bar 12097 for

JAMES J. PISANELLI, ESQ., Bar No. 4027
TODD L. BICE, ESQ., Bar No. 4534
DEBRA L. SPINELLI, Esq., Bar No. 9695
400 South 7th Street Suite 300
Las Vegas, Nevada 89101

JOHN A. O'MALLEY, ESQ.
SPENCER PERSSON, ESQ.
MICHELLE L. MELLO, ESQ.
NORTON ROSE FULBRIGHT US LLP
555 South Flower Street, Forty-First Floor
Los Angeles, California 90071

Attorneys for Plaintiff

[1] Additionally, this letter is plainly inadmissible hearsay in any event. *In re Marriage of Kutinac*, 538 N.E.2d 862, 866 (1989) (reversing trial court's admission and reliance upon doctor's letter because a "letter is hearsay as to its contents and is not admissible unless it falls within one of the exceptions to the hearsay rule.").

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 22nd day of February, 2019, I caused to be served via the Court's e-filing/e-service system, true and correct copies of the above and foregoing **OPPOSITION TO DEFENDANT LAS VEGAS SANDS CORP.'S MOTION FOR A PROTECTIVE ORDER TO PREVENT PLAINTIFF FROM RE-DEPOSING SHELDON G. ADELSON** to the following:

James J. Jimmerson, Esq.
JIMMERSON LAW FIRM, P.C.
415 South 6th Street, #100
Las Vegas, NV 89101

Richard A. Sauber, Esq.
Jennifer S. Windom, Esq.
ROBBINS, RUSSELL, ENGLERT
1801 K Street, N.W., Suite 411-L
Washington, DC 20006

An employee of Pisanelli Bice PLLC

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